Court No.2

HIGH COURT OF UTTARANCHAL AT NAINITAL

(1) Income Tax Appeal No.173 of 2005

M/s B. J. Services Company Middle East Ltd.
As agent of Mr. Ramulocanja & 5 others
Dehradun. ..... Appellant

Versus

1. Income Tax Appellate Tribunal
   Delhi Bench 'B' New Delhi
2. Commissioner of Income Tax (Appeals)
   Dehradun
3. Assistant Commissioner of Income Tax
   Special Circle, Dehradun

..... Respondents

(2) Income Tax Appeal No. 175 of 2005

M/s Hughes Services (FE) Pte. Ltd.
As agent of Mr. Edgar D.M. and others
Dehradun. ..... Appellant

Versus

1. Income Tax Appellate Tribunal
   Delhi Bench 'B' New Delhi
2. Commissioner of Income Tax (Appeals)
   Dehradun
3. Assistant Commissioner of Income Tax
   Special Circle, Dehradun

..... Respondents

(3) Income Tax Appeal No.176 of 2005

M/s Hughes Services (FE) Pte. Ltd.
As agent of Mr. Vestel Howards & others
Dehradun. ..... Appellant

Versus

1. Income Tax Appellate Tribunal
   Delhi Bench 'B' New Delhi
2. Commissioner of Income Tax (Appeals)
   Dehradun
3. Assistant Commissioner of Income Tax
   Special Circle, Dehradun

..... Respondents

Sri V.K.Bisht, learned Senior Advocate assisted by Sri Arvind Vashisth and Sri Ambrish Chatterjee, learned counsel for the appellant.
Sri S.K.Posti, learned counsel for the respondents.

Dated: 06.12.2005

Hon'ble P. C. Verma, J.
Hon'ble J. C. S. Rawat, J.

All these three appeals are being heard together and decided by one and common order as the questions of law arose for consideration in these appeals are same.

2. Income Tax Appeal No.173/2005 is filed against the order dated 01.03.2004 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi in M.A. No.446/Del/04. The dispute relates to the Assessment Year 1995-96 & 1996-97. Income Tax Appeal Nos. 175/2005 and 176/2005 have been filed against the common order dated 23.02.2005 passed by Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi in M.A. No.12/Del/2004 & M.A. No.13/Del/2004 respectively. These appeals have been filed mainly on the ground that the Tribunal has no jurisdiction to review the entire order in the garb of correction of mistakes. On an application filed under section 254(2) of the Income Tax Act, 1961, the Income Tax Tribunal reviewed its order in view of the decision taken by this Court in **C.I.T. Dehradun & another Vs. Sedco Forex Intl. Drilling Ltd. [I.T.R. 2003 Vol.264 page 320].**

3. In these appeals, the following questions have been raised to be answered by this Court:-

a. "Whether in law, the order u/s 254(2) of the Income Tax Act, 1866 can be reviewed in guise of exercise of power to correct mistake apparent on the fact of record?"

b. "Whether subsequent decision of jurisdiction High Court, taken a different view, will entitle the revenue to reopen a concluded assessment?"

c. Whether appellate authority u/s 254(2) does enjoy the powers of reviewing its order as, are available with the Civil Court under Order 47. The power to rectification is confined to the ground 'mistake apparent on the fact of record' only?"

4. The power of review vested with the Appellate Tribunal is provided under section 254(2) of the Income Tax Act, 1961 which reads as under:-

> *"254(2) – The Appellate Tribunal may,* ***at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record****, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer."*

5. The learned Tribunal has opined that the Tribunal has power to review its judgment within four years if any error is pointed out in the judgment. After considering the various judgments, the members of the Tribunal have power to review its judgment within four years. A plain reading of the law shows that the error should come out from the record. The law laid down by the Hon'ble Apex Court is not being part of record, therefore the power of review is confined only when the error is apparent from record. Since, there are conflicting issues in this regard, we are not expressing any opinion on this point. Such final judgment has been pronounced by the Apex Court in relation to the taxability of "off-period salary", therefore we do not find any error in the decision rendered by the majority of the members of the Appellate Tribunal in reviewing its order and deciding the case in view of the law laid down by this Court in C.I.T. & Anr. Versus Sedco Forex International Drilling Co. Ltd. case (supra). In the said case, the question of taxability

of “off-period salary” was answered in favour of the revenue. Accordingly, the members of the Tribunal reviewed its order and decided the issue in favour of the revenue.

6. Subsequently, the judgment passed by this Court in C.I.T. Dehradun & Anr. versus Sedco Forex (supra) was challenged before the Apex Court and the Apex Court in **Civil Appeal Nos. 351-355 of 2005, Sedco Forex International Drill Inc. & Ors. versus Commissioner of Income Tax, Dehradun & Anr.** reported in **Judgment Today 2005 (9) S.C., page 639** has set aside the judgment of this Court and the issues were decided in favour of assessees. In view of the said judgment, the questions of law mentioned earlier cannot be sustained in the eye of law. Therefore, only one question of law again arises before this Court as to whether the assessees are entitled to get the benefit of the decision of the Apex Court or not.

7. The judgment of the Apex Court in law of the land and is binding on this Court under Article 141 of the Constitution of India. Since, the payment of income tax in respect of salary received by the assessees during the off-period has been held to be taxable in the assessment year prior to 1999, therefore we hold that the assessees-appellants are not liable to pay tax on the amount received towards “off-period salary” in view of the law laid down by the Apex Court in Civil Appeal Nos. 351-355 of 2005, Sedco Forex (supra).

8. All these appeals are allowed accordingly.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Dated 06.12.2005
LSR